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State v. Oxier Respondent's Brief Dckt. 44531

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44531
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2016-2833
)	
CLINT TERRELL OXIER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Oxier failed to establish that the district court abused its discretion by imposing a 10-year fixed sentence, and a consecutive 10-year indeterminate sentence, upon his guilty pleas to two counts of sexual exploitation of a child?

Oxier Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Oxier pled guilty to two counts of sexual exploitation of a child (in violation of I.C. § 18-1507(2)(a)) and the district court imposed a sentence of 10 years fixed for the first count, and a consecutive sentence of 10 years indeterminate for the second count. (R.,

pp.63-66.) Oxier filed a notice of appeal timely from the judgment of conviction. (R., pp.71-73.)

Oxier asserts his sentences are excessive in light of his eventual acceptance of responsibility, purported remorse, and amenability to treatment “in a locked facility.” (Appellant’s brief, pp.3-5; PSI, p.263.¹) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for sexual exploitation of a child (in violation of I.C. § 18-1507(2)(a)) is 10 years. I.C. § 18-1507(3). The district court imposed

¹ PSI page numbers correspond with the page numbers of the electronic file “Oxier 44531 psi.pdf.”

consecutive sentences of 10 years fixed and 10 years indeterminate, both of which fall within the statutory guidelines. (R., pp.63-66.) At sentencing, the state addressed the heinous nature of the offenses, the ongoing harm to the victims, Oxier's mendaciousness, his attempts to rationalize his sexual offending, and his high risk to sexually reoffend. (Tr., p.27, L.6 – p.31, L.23 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Oxier's sentences. (Tr., p.35, L.20 – p.37, L.2 (Appendix B).) The state submits that Oxier has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Oxier's convictions and sentences.

DATED this 27th day of April, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of April, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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<p>1 one of the batteries of tests and my client said 2 he certainly didn't mean to omit that one. He 3 didn't have any glasses on when he went through 4 this. So it wasn't an intentional omission of 5 that question. 6 THE COURT: Are you reading page 11 of 18 on 7 the psychosexual evaluation? 8 MR. COONTS: Yeah, very bottom of page five. 9 THE COURT: Okay. 10 MR. COONTS: Yeah. And then, finally, Your 11 Honor, at page 17, this is -- relates back to the 12 -- to the first issue we talked about, the -- one 13 of the enhancers used in assessing it was prior 14 convictions for sexual offenses. And as we noted 15 earlier, other than the Ada County conviction, the 16 Nevada and California weren't convictions for 17 sexual offenses, so -- as far as aggravators or 18 variables that he has. I'd just note that those 19 weren't convictions for sexual offenses. 20 THE COURT: Do you believe that having 21 included those as static variables might change 22 the outcome of the psychosexual evaluation and do 23 you want more time? 24 MR. COONTS: No, Your Honor. I think as 25 long as the Court has noted the changes that we've</p>	<p>1 indicated, I don't -- we kind of talked about this 2 when we went over the material. I don't think a 3 whole new psychosexual evaluation is warranted 4 based on that. 5 THE COURT: All right. Anything else? 6 MR. COONTS: No, Your Honor, that's it. 7 THE COURT: Any -- we just addressed 8 corrections. Are there any objections to anything 9 that's included in the presentence materials or 10 psychosexual evaluation? 11 MR. COONTS: No, Your Honor. 12 THE COURT: Ms. Guzman? 13 MS. GUZMAN: No. 14 THE COURT: Ms. Guzman, is there 15 restitution? 16 MS. GUZMAN: No. 17 THE COURT: I'm assuming that there's no 18 identified victim in this case? 19 MS. GUZMAN: No. I think there were some 20 that were identified through the system, but none 21 that have been identified as receiving restitution 22 for. 23 THE COURT: Okay. Do any of them wish to 24 make any statement? 25 MS. GUZMAN: No.</p>
<p>1 THE COURT: Does either side wish to offer 2 evidence? 3 MS. GUZMAN: No, Your Honor. 4 MR. COONTS: No, Your Honor, just argument. 5 THE COURT: Ms. Guzman. 6 MS. GUZMAN: As I'm sure Your Honor is 7 aware, in the underlying case -- not the 8 underlying case, but the case that went to trial 9 where these images were found, the defendant has 10 already been sentenced to 20 plus life on all 11 three counts of lewd and lascivious conduct with a 12 minor of five years of age. That five year old 13 was his stepdaughter. She took the stand and was 14 quite brave. He was quite adamant during that 15 investigation that nothing would be found on his 16 computer, that he changed his phones, that he had 17 lost it, is what he told his wife. When she was 18 cleaning out items, she found that phone hidden in 19 the closet and she turned it over to law 20 enforcement. She's been cooperative and believed 21 her daughter from the get-go. 22 That phone was forensically examined 23 and it showed that the defendant had been over a 24 long period of time trading child pornography with 25 other individuals. Multiple photos on there.</p>	<p>1 Mostly they were from females of the age of two to 2 the age of ten engaged in oral sex as well as anal 3 penetration and the L & L that involved the five 4 year old was oral sex. He also possessed a video 5 of child porn. 6 And I think that the psychosexual 7 evaluation totally supports what we found; he's a 8 pedophile, plain and simple. High risk to 9 reoffend. He's amenable to treatment in a locked 10 facility. 11 I did note defense counsel's changes 12 about the convictions versus the arrests. I don't 13 think it changes the psychosexual evaluation 14 because he actually scored lower on the static, 15 moderate high, versus the high that he ended up 16 with overall. And part of it, I think, is -- 17 well, this is the first time we've gotten to see 18 the PSI really where he's cooperated on it. 19 And we know throughout the 20 investigation that he -- basically I think what -- 21 he had a sexual addiction. I mean, he was meeting 22 people on Craigslist, on the internet, he was 23 living an entire life of lies with his family that 24 he had basically -- I hate to use the term, but 25 duped into marrying thinking he was a family man.</p>

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<p>1 He and his wife just had the cutest little baby, 2 Sammie. I've met Sammie. Adorable little girl. 3 And his wife's a very nice woman who just got a 4 college degree and was looking forward to their 5 life together. And he gave all of that up for the 6 crimes that he's committed.</p> <p>7 I know on his LSI he only scored a 8 moderate risk, but he also had trouble in the 9 psychosexual because -- I'm not sure that he 10 really understands the victimization here. Every 11 time he opens up one of those photos of one of 12 those little girls giving grown men oral sex or 13 being anally penetrated, he's revictimizing that 14 child. That child's not a cooperative victim in 15 that photograph. That's just a tiny, little 16 child. And I don't even see -- I can tell you in 17 our office we're offered free psychological 18 counseling for looking at it, so, I mean, it's so 19 disturbing to see that you're raising three little 20 girls supposedly as your own and you're finding 21 this something that you just can't let go of.</p> <p>22 And I say all of that because he 23 acknowledges his guilt in the new materials, he 24 said he's sorry, et cetera, et cetera, but I have 25 to wonder -- we went to trial to get to this point</p>	<p>1 and if the jurors hadn't have found him guilty, 2 would he have written a letter saying how sorry he 3 was or a letter later to me, which I do 4 appreciate, admitting that he had committed these 5 crimes and that he was sorry he put a little five 6 year old on the stand to talk about everything 7 that had occurred in brushing her teeth, et 8 cetera.</p> <p>9 But when I was also looking through 10 these materials, I noticed that his letters in 11 support seem to question whether he's guilty. I 12 don't think that there's -- of any of these 13 crimes. I don't think that there's any question 14 as to that. But I guess on page five of the PSI, 15 I just kept coming back to it and coming back to 16 it because I thought this is where your thinking 17 errors are just totally off the chart for me.</p> <p>18 He wants to explain that what he did 19 with that five year old was consensual because it 20 wasn't forced. He said, I understand what I did 21 was wrong, but it's not like she said no and I 22 kept going. I mean, the thinking errors are so 23 far off the chart, I don't know even know where to 24 go with that. And he just doesn't seem to 25 understand the victimization even after we</p>
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<p>1 watching the little five year old testify that -- 2 I think Judge Hippler hit it on the head with this 3 20 to life. So I'm going to ask that this Court 4 also do a ten plus 0 on one count and an 0 plus 5 ten on the other count, run it concurrently with 6 what he already had and hopefully he can get the 7 help and start to understand all of the damage 8 that he's done to not only his own family, but to 9 these other little victims that were out there 10 whose photographs are -- he's trading with other 11 adult men and now they're floating all over the 12 place.</p> <p>13 I'm going to leave the fine and any PD 14 reimbursement in this Court's discretion, but I 15 also ask that this Court sign a forfeiture order 16 that all electronic devices, images, et cetera, 17 received which depict child pornography or contain 18 child pornography or were used to access child 19 pornography in this case be forfeited so that the 20 State can destroy those items in hopes that these 21 images at some point being able to be taken down 22 off the Internet and all of these victims 23 identified at some point. Thank you.</p> <p>24 THE COURT: Thank you. Mr. Coonts. 25 MR. COONTS: Thank you, Your Honor.</p>	<p>1 Your Honor, it is true that my client 2 is serving a substantial fixed sentence in another 3 case. And I think one that is worth noting is 4 that this case was pending when he was sentenced 5 on the other case. So I think given the length of 6 the sentence in the other case, at least the judge 7 at the time was aware that this case existed, 8 presumably took that into some consideration in 9 imposing a sentence.</p> <p>10 Your Honor, while it's true that he did 11 come back as a high risk to reoffend, I think it's 12 important to note that in the psychosexual that he 13 was amenable to treatment. And I think that would 14 be the light at the end of the tunnel -- or at the 15 ends of tunnel for my client in this case, Your 16 Honor.</p> <p>17 He has expressed remorse for his 18 actions in thinking through the repercussions that 19 he caused and he's willing, as noted by the 20 participation in the psychosexual eval and 21 presentence investigation, he said, I have turned 22 a corner. He's now willing to confront his 23 problem head on where previously statements given 24 or actions taken were done in complete denial of 25 the fact that he has a problem.</p>


APPENDIX B

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<p>1 And so given the fact that he's 2 amenable to treatment, given the fact that he's 3 willing to participate in that treatment, I would 4 say that the corner has been turned and he can 5 begin the long and arduous journey of trying to 6 address that problem. I'm not a provider, I don't 7 know how that would be done. But as noted in the 8 PSI, it would be done in custody and – while 9 getting that treatment. And I think my client is 10 realistic about the fact that he will be in 11 custody while getting that treatment. But I don't 12 think that it will be time wasted as he's coming 13 to terms with himself and the problems he's 14 caused, Your Honor.</p> <p>15 As stated in the PSI, he enjoyed a very 16 – a fairly normal childhood. He does still have 17 some support from his family in this case, his 18 parents, to help him through this. He's a hard 19 worker, Your Honor. As noted, he would be 20 described as a hard worker. And, Your Honor, I 21 think what that shows is not the fact that he's -- 22 he has the ability to work hard in dealing with 23 the treatment, dealing with the road ahead that he 24 needs to head down and get done what needs to be 25 done.</p>	<p>1 Your Honor, I think it's also worth 2 noting that he's also willing to participate in 3 mental health counseling. Again, page 13 of the 4 PSI, that's something that I think signals that 5 he's willing to cooperate and try to come back 6 from where he was several months ago.</p> <p>7 I think at this point, as the PSI said, 8 he's tired of lying, he's tired of living two 9 lives. He wants to engage in the process in hopes 10 of dealing with his addiction, his problems and 11 hopefully someday be able to reintegrate into the 12 community no longer a threat, no longer a high 13 risk to reoffend, but as somebody who's 14 successfully completed rehabilitation.</p> <p>15 As far as a fine, Your Honor, I think 16 in this case the financial obligation that the 17 Court imposes, I don't think he's going to be able 18 to do those. He's going to be in custody for some 19 time. Speaking with the other attorney about that 20 sentence, I think that's just not – he's not 21 going to be able to get a job to pay those 22 financial obligations.</p> <p>23 So, Your Honor, we would ask in this 24 case that the term of five years fixed followed by 25 five years indeterminate with both Counts One and</p>
<p>35</p> <p>1 Two and that they would run concurrently in this 2 case, Your Honor. If the Court is willing to have 3 those – if the Court would run consecutively the 4 five year fixed followed by 15 indeterminate, the 5 counts would be run consecutively, five plus five 6 and zero plus ten, Your Honor, that will give him 7 time to go through the system, to participate in 8 the programs available to him, to take advantage 9 of that time and through his hard work and 10 abilities to recognize that he has some – he has 11 issues that need to be addressed, Your Honor. And 12 hopefully, if the parole board determines so, 13 maybe he can get out on parole. But we would ask 14 that the Court will impose that sentence. Thank 15 you.</p> <p>16 THE COURT: Thank you. Mr. Oxier, you get 17 the last word. Is there anything you want to tell 18 me before I impose sentence?</p> <p>19 THE DEFENDANT: No, sir.</p> <p>20 THE COURT: Well, based on your pleas of 21 guilty, I'm going to find that you are guilty on 22 two counts of sexual exploitation of a child. I'm 23 going to impose a judgment of conviction. On each 24 count I'm going to impose an aggregate term of ten 25 years. On Count One it will be ten years fixed</p>	<p>36</p> <p>1 followed by zero years indeterminate. On Count 2 Two it will be zero years fixed followed by ten 3 years indeterminate. Counts One – Count Two will 4 be served consecutively to Count One. I will not 5 impose a fine. I will impose court costs and I'll 6 not impose public defender reimbursement.</p> <p>7 The reason that I'm imposing this 8 sentence, frankly, Mr. Oxier, is you frighten me. 9 There are a lot of different circumstances that we 10 see from week to week, but you present someone 11 that preys upon the most vulnerable of us and 12 inflicts the most harm and I'm told that you 13 present a high likelihood of doing it again. And 14 I think that under those circumstances the primary 15 objective of protecting society is paramount in 16 this case.</p> <p>17 I have considered rehabilitation. And, 18 frankly, your awareness of the harm that you have 19 caused strikes me as coming very recently to you 20 and it is entirely incomplete. When I read that 21 you believed this was a consensual act, I found 22 that – I found it breathtaking, frankly. You are 23 completely naive and wrong about that.</p> <p>24 I hope that you are able to access 25 treatment and that you have – that you come out</p>

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1 of this a completely different person than you are
 2 going in to it. In that, I wish you luck.
 3 You have the right to appeal the
 4 judgment that I've entered and you have 42 days
 5 from the date that the judgment is filed. You
 6 have the right to be represented by an attorney in
 7 pursuing the appeal. If you cannot afford your
 8 own attorney, one will be appointed for you at
 9 public expense and payment of costs will be at
 10 public expense. Any questions?
 11 MS. GUZMAN: Your Honor, will you be signing
 12 a proposed forfeiture order for the electronic
 13 devices?
 14 THE COURT: If you submit one with
 15 supportive authority, I will do that.
 16 MS. GUZMAN: Okay. We'll do it. The State
 17 is returning the PSI.
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1 REPORTER'S CERTIFICATE
 2
 3
 4 I, KIM I. MADSEN, Official Court
 5 Reporter, County of Ada, State of Idaho, hereby
 6 certify:
 7 That I am the reporter who took the
 8 proceedings had in the above-entitled action in
 9 machine shorthand and thereafter the same was
 10 reduced into typewriting under my direct
 11 supervision; and
 12 That the foregoing transcript contains
 13 a full, true, and accurate record of the
 14 proceedings had in the above and foregoing cause,
 15 which was heard at Boise, Idaho.
 16 IN WITNESS WHEREOF, I have hereunto set
 17 my hand this 1 day of November, 2016.
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 19
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 22 KIM I. MADSEN, Official Court Reporter
 23 CSR No. 428
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